

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION  
Case No. 2:00-cv-00020

FILED

In the Matter of the Complaint of  
Shelly Materials, Inc. as owner of the  
M/V DIRK TAYLOR, Official No. 608017,  
for Exoneration From or Limitation of Liability

CLERK

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**COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY**

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COMES NOW, Shelly Materials, Inc., as owner of the M/V DIRK TAYLOR, Official No. 608017, and in support of its Complaint seeking exoneration from or limitation of liability, pursuant to 46 USC § 181, et seq. states:

1. This action is brought pursuant to 46 USC § 181 et seq., commonly called the Limitation of Liability Act.

2. This is an admiralty and maritime claim within the meaning of Rule 9(h), Federal Rules of Civil Procedure and 28 USC § 1333 and this Court has jurisdiction over these parties and this cause of action, and this matter is governed procedurally by Rule F of the Supplementary Rules for Certain Admiralty and Maritime Claims.

3. Shelly Materials, Inc. at all relevant times, was and is the owner of the M/V DIRK TAYLOR, Official No. 608017, an inland river towboat, which was, at all relevant times, tight, staunch, strong and seaworthy in all respects.

4. On information and belief, William Joseph Dapper is an adult resident citizen of the State of Ohio who sustained an injury while aboard the M/V DIRK TAYLOR in or near Charleston, West Virginia.

5. On or about September 4, 1999, the M/V DIRK TAYLOR was afloat on the Kanawha River and was moored to a barge at approximately Mile 58.3 in Charleston, West Virginia. William Joseph Dapper was aboard M/V DIRK TAYLOR on that date as a guest, not a crew member.

6. At approximately 11:30 p.m., Mr. Dapper was injured when he jumped and/or fell from the roof of the pilot house of the M/V DIRK TAYLOR.

7. On November 22, 1999, Shelly Materials, Inc. received its first notice of claim pertaining to Mr. Dapper's injuries.

8. At the time of and immediately following this incident, the value of Shelly Materials, Inc.'s interest in the M/V DIRK TAYLOR was Three Hundred Thousand and 00/100 Dollars (\$300,000.00) and there was no pending freight at the time of the incident. Shelly Materials, Inc. attaches, as Exhibit A, an Affidavit from David Carande, reflecting the value of said vessel at the time of said incident and as Exhibit B, an Affidavit from Dennis Taylor, reflecting the lack of pending freight.

9. The M/V DIRK TAYLOR has not been attached or arrested in any suit, nor has any suit been brought in connection with this claim.

10. In said claim, Shelly Materials, Inc. alleges on information and belief, that Mr. Dapper seeks to recover an amount which exceeds the value of Shelly Materials, Inc.'s interest in the M/V DIRK TAYLOR.

11. The above-described incident, and all losses and damages resulting from it, were not caused or contributed to by any fault or neglect on the part of Shelly Materials, Inc., as owner of the M/V DIRK TAYLOR, or on the part of the M/V DIRK TAYLOR itself,

nor were there any unseaworthy conditions aboard the M/V DIRK TAYLOR which caused or contributed to this incident. Accordingly, Shelly Materials, Inc., and the M/V DIRK TAYLOR are each entitled to be exonerated from all liability for said incident.

12. Additionally and/or alternatively, said incident and all losses and damages occurring as a result of it, occurred without any privity or knowledge of any officer, director or managing agent of Shelly Materials, Inc., as owner of the M/V DIRK TAYLOR, and for this reason, Shelly Materials, Inc. and the M/V DIRK TAYLOR are entitled to limit their liability to the post-accident value of the M/V DIRK TAYLOR pursuant to 46 USC § 181, *et seq.*

13. Pursuant to Rule F of the Supplemental Rules for Certain Admiralty and Maritime claims and the Federal Rules of Civil Procedure and subject to a formal appraisal of Shelly Materials, Inc.'s interest in the M/V DIRK TAYLOR, Shelly Materials, Inc. offers an *ad interim* stipulation for the value of the M/V DIRK TAYLOR in the sum of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) plus interest at the rate of six percent (6%) per annum with security, said sum being in excess of the aggregate value of Shelly Materials, Inc.'s interest in the M/V DIRK TAYLOR after the above incident and its costs in the sum of Two Hundred Fifty and 00/100 Dollars (\$250.00).

14. The Complaint is filed within six (6) months after Shelly Materials, Inc.'s first receipt of written notice of claim.

15. At the time this Complaint was filed, the M/V DIRK TAYLOR was within the jurisdictional boundaries of the United States District Court for the Southern District of West Virginia.

WHEREFORE, Shelly Materials, Inc., prays:

- a. That this Court enter an Order approving an *ad interim* stipulation this day filed by Shelly Materials, Inc. for the value of the M/V DIRK TAYLOR, its pending freight then earned, and costs, in the total amount of Three Hundred Thousand Two Hundred Fifty and 00/100 Dollars (\$300,250.00) plus interest at the rate of six percent (6%) per annum;
- b. That this Court approve the Bond filed as security for the value of the M/V DIRK TAYLOR, and the court costs in the total amount of Three Hundred Thousand and 00/100 Dollars (\$300,250.00) plus interest at the rate of six percent (6%) per annum from the date of this Petition;
- c. That upon approval of the foregoing, this Court enter an Order
  - (1) enjoining or restraining the commencement or prosecution of any and all actions, suits or legal proceedings of whatsoever kind, nature or character by any claimant against Shelly Materials, Inc., its officers, agents, servants, employees or affiliated companies, as owner of the M/V DIRK TAYLOR or against the M/V DIRK TAYLOR itself, arising out of or attributable to the aforementioned incident;
  - (2) admonishing all claimants to appear and file their claims with the Clerk of this Court on or before the date to be fixed by this Court or be forever barred and permanently enjoined from making and filing such claims; and
  - (3) directing all claimants to answer the allegations contained in this Complaint;

d. That the Court after due hearing, determine that Shelly Materials, Inc. and/or the M/V DIRK TAYLOR is/are not liable for any damage on any basis whatsoever in connection with the above-described accident;

e. That, in the alternative, should this Court determine that Shelly Materials, Inc. is liable to any person, firm, corporation or entity to any extent on any basis, which is denied, the Court then determine that Shelly Materials, Inc. is entitled to limit its liability to the value of its interest in the M/V DIRK TAYLOR and that a judgment be entered discharging Shelly Materials, Inc. and the M/V DIRK TAYLOR from any further liability arising from or growing out of or in connection with the aforementioned incident; and

f. For such other relief as proof may show appropriate.

RESPECTFULLY SUBMITTED, this the 10<sup>th</sup> day of January, 2000.

GAULT, MARSHALL & MILLER  
P.O. Box 30  
Paducah, KY 42002-0030  
(270) 442-1900  
(270) 442-8247 (fax)

and

FLAHERTY, SENSABAUGH & BONASSO  
P.O. Box 3843  
Charleston, WV 25302  
(304) 347-4209  
(304) 345-0260 (Fax)

By:   
\_\_\_\_\_  
David Givens

Attorneys for Shelly Materials, Inc.

AFFIDAVIT

I, Dennis Taylor, being first duly sworn, depose that I am the Vice President of Shelly Materials, Inc., Petitioner herein; that I have read the foregoing Complaint, and that all the matters set forth therein are true and correct to the best of my information and belief; that I am authorized by Shelly Materials, Inc. to make this verification on its behalf; and that the same is my free act and deed and the free act and deed of said corporation.

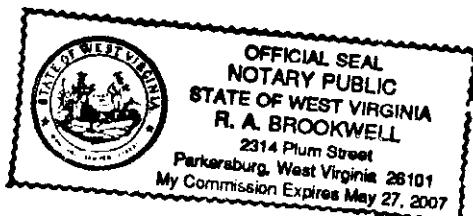
SHELLY MATERIALS, INC.

By Dennis Taylor  
Dennis Taylor  
Vice President

State of Ohio ~~WEST VIRGINIA~~ <sup>WV</sup>  
County of WOOD

SWORN TO AND SUBSCRIBED BEFORE ME, by Dennis Taylor,  
Vice President of Shelly Materials, Inc. on this the 21 day of January, 2000.

My commission expires: May 27, 2007



R. A. Brookwell  
Notary Public

UNITED STATES DISTRICT COURT  
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CHARLESTON DIVISION  
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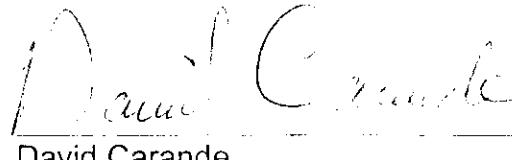
**AFFIDAVIT OF VALUE**

STATE OF OHIO

COUNTY OF Lawrence

I, David Carande, who being first duly sworn, state as follows:

1. I am an independent marine surveyor. As a marine surveyor, I perform condition and valuation surveys of inland river towing vessels and determine their projected fair market values.
2. I have examined the M/V DIRK TAYLOR and am familiar with its condition.
3. I am familiar with the market value of boats of this type today and in September 1999.
4. Based on my examination of the M/V DIRK TAYLOR, my familiarity with it and my knowledge of market value, it is my opinion that the fair and reasonable market value of the M/V DIRK TAYLOR as of September 4, 1999, was \$300,000.00.

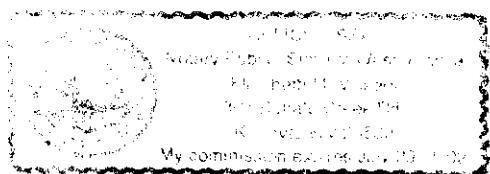
  
\_\_\_\_\_  
David Carande

STATE OF **OHIO**

COUNTY OF Cuyahoga

SWORN TO AND SUBSCRIBED BEFORE ME, by David Carande on this the  
4<sup>th</sup> day of January, 2000.

My commission expires: January 11, 2002.



David Carande  
Notary Public

Exhibit B  
2000-00000

AFFIDAVIT OF DENNIS TAYLOR

I, Dennis Taylor, after being sworn under oath, state:

1. I am over eighteen (18) years of age.
2. I am competent to testify based on personal knowledge regarding the facts contained herein.
3. I am the Vice President of Shelly Materials, Inc.
4. On September 4, 1999, there was no pending freight then earned by the M/V DIRK TAYLOR.

I DO SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

FURTHER THE AFFIANT SAYETH NAUGHT

SHELLY MATERIALS, INC.

By Dennis Taylor  
Dennis Taylor  
Vice President

Date: 1/5/00

STATE OF WEST VIRGINIA

COUNTY OF Wood

SWORN TO AND SUBSCRIBED BEFORE ME by Dennis Taylor, Vice President of  
Shelly Materials, Inc., this the 5<sup>th</sup> day of January, 2000.

My commission expires: May 27, 2007

R. A. Brookwell

Notary Public

